

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

JEANIE DEHART MANZO,

Plaintiff,

vs.

COMMISSIONER of Social Security,

Defendant.

Tim D. Wilborn
WILBORN LAW OFFICE, P.C.
Tim Wilborn, Attorney at Law
P.O. Box 2768
Oregon City, OR 97045

Attorney for Plaintiff

Richard A. Morris
SOCIAL SECURITY ADMINISTRATION
Office of the General Counsel
701 Fifth Avenue, Suite 2900 M/S 901
Seattle, WA 98104-7075

Civil No. 10-cv-1062-HZ

OPINION & ORDER

Adrian L. Brown
U.S. ATTORNEY'S OFFICE
District of Oregon
1000 S.W. Third Ave., Suite 600
Portland, OR 97204

Attorneys for Defendant

HERNANDEZ, District Judge:

Now before me is an unopposed motion for attorney fees (doc. #27) filed by Jeanie Dehart Manzo ("Plaintiff"). Plaintiff's motion seeks an award under the Social Security Act, 42 U.S.C. § 406(b), for attorney fees in the amount of \$8,462.00.

STANDARD

42 U.S.C. § 406 provides, in pertinent part, as follows:

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment

42 U.S.C. § 406(b)(1)(A).

The amount awarded is reduced by the amount of attorney fees already awarded under the Equal Access to Justice Act ("EAJA"). Gisbrecht v. Barnhart, 535 U.S. 789, 796 (2002).

DISCUSSION

In determining a § 406(b) fee request, the court must start with the amount agreed upon by the claimant and her attorney, evaluating only whether that amount should be reduced for one of three reasons: (1) because "the attorney provided substandard representation," (2) because "the attorney . . . engaged in dilatory conduct in order to increase the accrued amount of past-due benefits," or (3) because "the 'benefits are large in comparison to the amount of time counsel

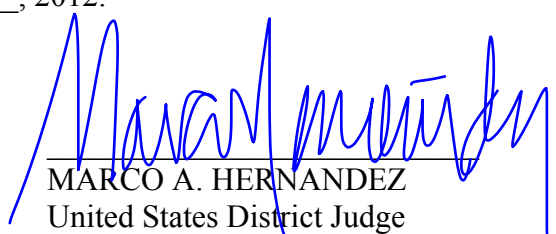
spent on the case.” Crawford v. Astrue, 586 F.3d 1142, 1148-49 & n.7 (9th Cir. 2009) (en banc) (quoting Gisbrecht, 535 U.S. at 808). Here, the terms of the contingent-fee agreement between Plaintiff and her attorney, Tim Wilborn (“Wilborn”), are within the statutory limits of 42 U.S.C. § 406. In addition, there is no indication that Plaintiff’s counsel was either ineffective or dilatory. The benefits are also not so large in comparison to the amount of time counsel spent on the case that a reduction of Plaintiff’s fee request is justified. Simply stated, pursuant to the factors enunciated in Crawford, there are no grounds for reducing the contingent fee arrangement between Plaintiff and her counsel under the circumstances here. Accordingly, Plaintiff is entitled to \$3,186.69, which amounts to 25% of her stated retroactive benefits of \$33,848 (\$8,462.00) less the \$5,275.31 in EAJA attorney fees previously awarded by this court on January 10, 2012.

CONCLUSION

For the foregoing reasons, Plaintiff’s unopposed motion for attorney fees pursuant to 42 U.S.C. § 406(b) (doc. #27) is GRANTED. Plaintiff’s counsel is to be awarded \$8,462.00, less the EAJA attorney fees of \$5,275.31, for a net award of \$3,186.69 to be paid from Plaintiff’s past-due benefits.

IT IS SO ORDERED.

Dated this 14 day of August, 2012.


MARCO A. HERNANDEZ
United States District Judge